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Although neither Saudi nor Islamic criminal law has been codified, or even summarized in a single authoritative volume, the attached summary prepared by the Embassy might be helpful to you.

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AN OUTLINE OF CRIME AND PUNISHMENT
IN ISLAMIC LAW

FOREWORD

The main object of this study is to give concise and up-to-date information of crime and punishment in the Arab world in general and in Saudi Arabia in particular with the purpose of shedding light on some aspects of Islamic law (sharia). There are some points to be cleared up before a survey of this subject can be intelligibly attempted:

1- It is unfortunate that any outline of Islamic law (sharia) is bound to make liberal use of generalization. Generalizations are, as a rule, very dangerous and very objectionable. They may be gunpowder in the hands of unwary. They are safe only when they are recognized and approached with caution.

2- Islamic law is so vast and difficult subject, for almost every word that one may right about it can be disputed or give offense. In times like the present - when fundamentalism is on the rise in the Arab world and when secular forces and Islamic modernism are on the defensive - one who desires to be impartially just in the expression of his views, moves as among sword-points presented on every side.

3- In light of this fact, this outline - which is guided by the memorable phrase of Emerson " If you cannot be free, be as free as you can " - should be taken as a sketchy survey trying to convey the general magnitude of an interesting and controversial subject.

INTRODUCTION

In Islam, the concept of the Law follows naturally enough from the Quran, where God appears as commanding and forbidding, rewarding and punishing. In addition, there is the Hadith, and the belief, present from the earlier times, that rules of right behavior may be found in the example of the Prophet and the practice of the early community at Madina. It may be added that the early Arab-Muslim Empire found itself in need of a legal system for the exigencies of political power and did not have any coherent earlier legal system of its own at its disposal, as the early Christians did in the legal system of the Roman Empire. Islam is submission to the will of God; it follows therefore that the will of God, already partly made explicit in the Quran is knowable and that its study is a matter of primary concern for Muslims.

Early Islam made no distinction between law and religion. It is significant that the word for the legal system of Islam -the sharia- was relatively late in making an appearance and the somewhat earlier word fiqh as "understanding" was used at first equally for the study of law and theology, though it has come to have almost exclusive legal connotation.

In later times, the sharia is seen by Muslims primarily as an all-embracing legal system which should ideally govern the phases of Islamic life --though for reasons of public welfare the legists grant the Muslim rulers the right of suspending the application of certain portions of the public law and substituting secular law; this has specially been true for the laws of punishment. Still, the Sharia is not thereby abolished or revoked --one does not revoke Divine law-- it is merely not enforced, because for temporal reasons it may not be feasible at that time and place to do so

It must be realized in this connection that Every sunni (orthodox) Muslim must follow one school (madhahab) of four accepted schools --Hanafi, Malki, Shafi or Hanbali. Its percepts dictate how he performs religious duties and how he interprets the Law. Though he may properly feel that his own school is in some sense "better" -and there have been occasions of religious and political tensions between one school and another -the official position is that all four are right and acceptable.

While there is no priesthood or clergy in Islam, properly speaking, there is a class which has played clerical role in Islamic society and which has acquired social and religious prestige identical in kind to that exercised by the priests of other religions. This is the 'ulama (the "learned") and the fuqaha ("lawyers") , the scholars and custodians of the Law. It is they who have traditionally decided what is an " official position

CRIME AND PUNISHMENT IN ISLAMIC SHARIA

In Islam the realms of God and Caesar are one, instead of having separate jurisdictions, as allowed by Christ. Here, by providing a complete system of social legislation based on divine sanctions, Islam comes much nearer to Judaism than to Christianity. Consequently, Islam is a divine law based on four sources: Quran which is the word of God . Supplementary to it is Hadith, which are traditions of the Prophet,-- the records of his actions and sayings -- from which Muslims must derive help and inspiration in arriving at legal decisions. If there is nothing either in the Quran or in the Hadith to answer any particular legal question, Muslims have to follow the dictates of secular reason in accordance with certain definite principles.. Thus, Islamic law is derived from four sources:

- 1- Quran .
- 2- The Sunnah, which is the traditions of Prophet Mohammad.
- 3- Ijma, which is the consensus of opinion among the learned Muslim Jurists.
- 4- Qiyas, which is analogy and reasoning.

Definition of crimes and their categories in Islamic Criminal Law

The word in Arabic used for crime is 'jareema' which means "trespass, overleap" the bounds of and also means to break or violate. In the Quran it is used in the meaning of sin (zanb). Because overleaping and trespassing the bounds made by God is a crime and committing crime is a sin; and therefore those who commit crimes are sinful.

Muslim legists and jurists have defined it as act of going against or beyond the provisions of law, whether commands or prohibitions which is, in other words, crossing the bounds made by God. As such, certain actions which have been forbidden and sanctioned by punishment in Islamic Law are considered crimes and hence are considered crimes against religion.

In Islamic Law, crimes are divided into two major groups:

- 1- Crimes for which 'Hadd' punishments are given such as unlawful intercourse (zina); its counterpart, false accusation of unlawful intercourse (Kadhf) ; drinking wine (shurb al-khamr); theft (sarika) and highway robbery (al-haraba).
- 2- Crimes such as homicide, bodily harm and damage to property. Crimes of this kind are called 'jinayat' (literally, offenses). The punishments for such crimes are such as 'Qisas' (retaliation); 'Kaffara' (expiation); 'Dia' (blood money); and 'Taazeer' (disciplinary actions).

The major difference between these two groups of crimes is that the punishments (Hadd punishment) ordained against the first group are considered the "rights of God" for which there is no pardon and no concession, while the punishments prescribed against the second group are the right of man and therefore they can be reduced or totally ruled out and pardoned if the victim, or in case of the murder, his next of kin agrees to do so. Muslim jurists have differed on the question whether punishments Qisas, Dia and Taazeer are also considered under Hadd punishment. The majority of jurists have expressed their opinion that Qisas (retaliation) although ordained by God does not come under Hadd, because it is the right of humans and is not the right of God; while Taazeer is neither sanctioned by God nor is it the right of God.. Crimes under Hadd punishments must fulfill two conditions: first is their invasion of the right of God and, secondly, that the punishments would have been sanctioned by the Quran and the Sunnah. The crimes for which the punishment of Qisas applies, fulfills one condition while Taazeer fulfills none.

Crimes for which Hadd punishments Are given

In the Quran the word 'Had' is always used in the plural 'Hudud'. It means the limits laid down by God; i.e. the provisions of the law whether commands or prohibitions. In Muslim criminal law Hadd means an unalterable punishment prescribed by Divine law which is considered the right of God. The crimes for which Hadd punishments apply are considered as crimes against religion because the person who commits such crimes violates the rules of God and transgresses the bounds made by Him. The Had is a right or claim of Allah (haqq allah) and, therefore, no pardon or amicable settlement is possible.

These crimes against religion are :

- 1- 'Zena', fornication , i.e. between persons who who are not in a state of legal matrimony. The Had for this crime is stoning to death for the married, 100 lashes for unmarried and 50 for slaves. The Hadd punishment for the unmarried who commits the crime of unlawful intercourse is mentioned in the Quran while the punishment for the married, guilty of this crime is sanctioned by Sunnah. Hadd will not be applicable to the insane and to the minors. A full investigation is also condition. If the required number (4 witnesses) is incomplete the Hadd will not be implemented. However, in the absence of four witness, confession of the accused is be deemed conclusive evidence

- 2- Kadhif is , slander in a special sense. If anyone accuses a respectable person of incontinence , without being able to bring four persons to support him, he is liable by law a definite punishment (Hadd) of 80 lashes for Kadhif.

3- al-sariqa , theft. The Quran says: " As to the thief, male or female, cut off his or her hands: a punishment by way of example, from God, for their crime: And God is Exalted in Power. The Cannon Law jurists are not unanimous as to the value of the property stolen, which could involve the penalty of the cutting off the hand. The majority hold that petty thefts are exempt from this punishment. The general opinion is that only one hand should be cut off for the first theft, on the principle that " if thy hand or thy foot offend thee cut them off and cast them from thee". apparently in the age of Jesus thieves were crucified . It should be mentioned in this connection that the second Caliph Omar, suspended this punishment during the years of famine.

4- al-haraba, highway robbery. Many crimes, including treason against the state, may come under al-haraba. Punishment of this crime is : execution, crucifixion, or the cutting off of hands and feet from opposite sides or exile from the land.

al-Murtad, one who turns back especially from Islam", an apostate. Apostasy is called 'ridda, it may be committed verbally by denying a principle of belief or by an action for example treating a copy of Quran with disrespect. In the Quran the apostate is threatened with punishment in the next world only; "the wrath of God will fall upon him. The death penalty of al-Murtad came in a tradition " Slay him, he who changes his religion."

3- Shurb al-Khamr, drinking wine. Hadith has many utterances against this theme: " wine is the key of all evil " , " Cursed is he who drinks, buys, sells wine or causes others to drink it.". As to punishment of him who drinks wine , Hadith tells us that Prophet Mohammad and his successor Abu Bakr were wont to inflict 40 blows by means of palmbranches or sandals. Under Omar's Caliphate it was 80 for the first time, 80 in the second time and death penalty for the third.

Acceptance of Evidence -

Islamic law requires the following conditions to be fulfilled for the acceptance of the evidence in order to avoid any sort of injustice by punishing an innocent as a result of false accusations: (a) that the number of the witnesses must not be less than four; (b) that all witnesses must be men particularly in the crime of 'zena' . In other cases where women's evidence is acceptable two women would be counted equal to one man (c) that the witnesses must have seen the incident of crimes by himself or otherwise the evidence would not be accepted (d) that the witness must be Muslim. Witnesses must be just and pious and they themselves must not be corrupt. The witnesses must not have any sort of enmity or malice against the accused.

In the cases of confession, Islam lays down certain conditions; the person (man or woman) confessing must be adult; (must not confess as a result of any force; (c) the confession must be uttered four times; (d) that the confession must be in court before a jury. It is also a condition that the punishment be given openly and publicly. The moot question is : Can any proof positive be established of the crime of Zena? The answer, in all fairness, is emphatic 'NO'. Adultery is nerve-racking vice, not like hypocrisy or gluttony, it cannot be practised in public. It is next to impossible to prove such a crime. The eye-witness of four just believers is required if a married person is to be killed for adultery. As for confession, no one will confess such a crime to be stoned for it. For a hand to be cut off, two believers must testify and the crime must fall outside the 11 separate restrictions (one of which if the object worth less than 17 grams or if the theft took place within the family etc.) al-Haraba can be exploited politically since its definition covers a wide area of crimes.

PRINCIPLES AND PRACTICE

Apart from Saudi Arabia, no other Muslim country has seen such punishments in their recent history (except the Sudan in the last days of Numeiri. It is a matter of common knowledge that Numeiri used 'sharia' as political expediency). Further more, all the legal codes in other Arab countries are based on either English or Napoleonic law. In Saudi Arabia, the legal system is largely based on Islamic Law based on the Hanbali School as interpreted by Ibn Taymiya, a theologian and jurist of Damascus in the Mamluk Sultanate. (Ibn Taymiya's importance lies in the fact that he considered himself a mujtahed, a doctor of the school with a right to form independent judgements and this at a time when most of the 'ulama' held that the "doors of interpretation 'ijtehad' were closed. Hence Ibn Taymiya's importance for the Muslim Modernists. Almost disregarded in his own days as a crank, he has become the inspiration of the revivalists. His doctrines were behind the rise of the Wahhabi movement of the mid-eighteenth century in Arabia and they have also guided the Muslim modernists, fundamentalists and Muslim brotherhood. The school is characterized by a fundamentalist rejection of any statement which cannot be firmly based on the Quran and Hadith. It has tended to preserve its suspicion of the use of reason in religious matters, and is usually considered the strictest and most uncompromising of the legal schools. The Hanbali jurists, almost alone still recommend the full punishments of the law. In his interpretation of the necessity of the legal punishment (Hudud) Ibn Taymiya says: It is not permissible when guilt is established by proof or by witness to suspend the legal punishment, either by remitting it or by substituting a fine or any other thing: the hand (of a thief) must be cut off, for the application of the punishments is one of the acts of cult (ibadat), like the Holy war in the Way of God, and it must be kept in mind that the application of

legal sanctions is one of the acts of God's mercy, so that the ruler must be strict by applying it and let no compassion deter or delay him in the observance of God's religion. Let his goal to have mercy on God's creature by deterring men from things rejected by God.

However, The Hanbali school is very strict only in religious matters; in secular affairs it is quite flexible. Its starting point is "Everything is permissible unless prohibited by a text of the Quran or Hadith ". It is this rule besides Ijtehad that helped the Saudi government to introduce modern technology in the country and several secular codes so as to adapt to modern world.

Modernist jurists and reformers have raised some points of great importance. For instance, they question how far commandments in the sacred texts are positive or permissive; do they mean You shall [not] or You may [not]? Are they matters of conscience which will be tried in heaven or are they subject to the action of an earthly court? How far is a divine ordinance binding when the conditions under which it was promulgated have passed away? These questions may have far-reaching effects in the long run. Religious reformation is not an easy process. It takes a long time . It took Europe, for instance , 600 years to secularize.

NATURE OF CRIMES IN THE KINGDOM

The following is a list of the crimes committed in the Kingdom during 1407 A. H. sourced to Ministry of the Interior:

<u>Murder</u>	56
<u>Manslaughter</u>	8
<u>Attack leading to death</u>	18
<u>Kidnapping</u>	64
<u>Immoral crimes</u>	2576
<u>Theft</u>	7553
<u>Drinking wine</u>	
<u>making & selling</u>	5085
<u>Incendiary</u>	29
<u>Faking</u>	144
<u>Forging</u>	22
<u>Fraud & swindling</u>	210-
<u>Holding unlicensed arms</u>	

In comparison with the crimes committed in other countries, the crime rate in Saudi Arabia is the lowest. In response to Western jurists who condemn punishment in Islamic Law as being severe and merciless, Saudi jurists maintain that " most of the crimes of larceny in the West are armed crimes and such crimes are committed after the stealee is being killed. The question is: Why do we have pity on the hand of the stealer and no pity on the neck of the stealee?. It is the severity of this punishment which spares the hand of the stealer from cutting (for fear of punishment) and spares the life of the stealee and maintains at the same time security for all."

As the years went by, the Muslim rulers found that sharia was inadequate or unsuitable to conditions of their new dominions. The view began to prevail that sharia expressed an ideal which the imperfections of the society made it impossible to realize in all its purity. Later, under the Ottoman Empire and the Arab states of today, with the exception of Saudi Arabia, a system of secular law was to replace sharia in all criminal and civil jurisdiction save matters of marriage, divorce and inheritance.

Currently, questions do persist about the sharia as Westerners compare it to their own values of liberty, equality, democracy and the rule of law. To Westerners, the term sharia connotes polygamy, beheading, cutting off the hands of thieves and so on and so forth. When Westerners see a woman appearing in public in a long black robe and a veil pulled over her head they assume that women in Islamic sharia is a second class citizen. When they see the streets patrolled several times, every day, by bearded-men, belonging to Committee for the Propagation of Virtue and Suppression of Vice, tapping on shop-fronts with canes to close them down completely for Muslim ritual prayers, they assume that Islam is based on 7 century practices with little relevance to modern world. Quite the contrary, The history of Islam has shown that it has extraordinary powers of adaptation: it has succeeded in absorbing apparently incompatible philosophies, and mutual contradictory religious conceptions, and it has silently abandoned others which it has tried and found wanting. Islam, like any other faith, is used by many people to justify almost any action they care to take. In Islam too, as in other religions, the ideal and practice clash. Westerners see the practice and condemn the ideal. Many Muslims deplore the practice and cling to their own concepts of the ideal.

A heated and important debate among Muslim fundamentalists, ulama, and Muslim modernists is going on in a number of Arab countries and in Egypt in particular as to whether the rules of sharia be adopted without any reservations to replace the standing positive laws or otherwise. Armed as they are with shibboleths and anathemas which can rouse the ignorant masses and terrorize men of vision, the old forces of reaction managed to gain the upper hand in the ongoing debate. They even managed to enforce some concessions from the secular rulers who are appeasing them for political reasons. Many see the Arabs' future as one of struggle between religious and secular forces. Muslim fundamentalists and other extremists start by regarding Allah as having the only legitimate authority on earth and that decisions and forms of government must be based as closely as possible on the Quran itself, and on on the sayings and the deeds of Prophet Mohammad. Secular forces contend that the Quran and sharia are quoted and requoted to support opposite points of views. They even contend that Hadith (what the Prophet said and did, in fact by what he is reported to have said and done and the two are not always the same) is quoted and requoted to

support opposite points of views. The debate is not cooling but heating up. Although the outcome of this debate is not the subject of our discussion, one tends to believe that the so called application of Islamic Sharia or Islamization of the present Muslim Arab societies will not work. Numeiri's experiment in the Sudan was a glaring example of the failure of this theory. The problem of Arab countries (with the exception of the oil-rich gulf countries) is economic and not religious one. Economic well-being and social justice is what people look for. Religious rhetoric alone does not solve the problems of poverty and hunger, sickness and illiteracy. Scientific approach alone can do the job and will not stop people from going to mosque, say their prayers five times a day and be the best people evolved for mankind, enjoining what is right and forbidding what is wrong and believing in Allah."

As for adultery , Saudi jurists contend that such stringent proof is required that the death penalty is very rare. Death penalty for apostasy has not been implemented neither in Saudi Arabia nor in any other Muslim Arab country in recent history. It was implemented once in January 1985 when Numeiri of the Sudan hanged Mahmoud Mohammad Taha for the alleged crime of 'heresy', whereas the actual fact was that Taha, who was 76 years old, had distributed a pamphlet that opposed the way in which Islamic Law was being instituted in the Sudan.

The Low crime rate alone does not prove that the application of Sharia is the main cause for deterring individuals from committing crimes. In fact, The Saudi social structure which has resulted from the financial bonanza and rapid modernization during the decade from 1975-80 has more or less helped remove the problem of poverty, which is the mother of crime. All crimes committed by Saudi nationals are motivated by either vendetta, rape or sexual perversion . Most of the criminals perpetrate their crimes under the influence of drink (crimes in Saudi Arabia are not viewed as the outcome of anthropological and social conditions. Likewise, individuals who break the law are not seen as a product of social evolution and as such are regarded as solely responsible for their disposition to transgress).

Crimes are non-existent among members of middle and higher classes (the term 'classes' used here does not convey an accurate picture of the Saudi egalitarian society. Why? the bedouins or semi-bedouins who may be termed lower classes consider themselves nobler than settled people whom bedouins disdain as weak and sedentary.

Rate of crime among the expatriates is also low, even among the lowest strata (the Yemeni, Pakistani, Egyptian and Asian laborers including the growing number of household servants - the maids and chauffeurs who generally live in the home of their employers). Crimes committed by those expatriates are: bribery, drug trafficking, forgery, murder and rape. Two heinous crimes of murder were committed in homes by household servants during the past five years: One by a philippino servant who murdered his Lebanese employer (he was beheaded and was made to confess his crime on television) and Another Philippino maidservant also killed her employer's daughter and she was also executed in public in 1988. In addition, expatriates are strictly controlled and their public behaviors are closely monitored. Expatriates do not pose any threat or raise any sensitive issue of common concern to the Saudi authorities since political expression is out of the question. Only few examples did occur in 1976 when Asian laborers attempted to strike and in 1979 in Makkah incident and the two incidents were handled swiftly and efficiently by the authorities.

However, the true test is just beginning. With the diminishing of revenues, the onslaught of modernization and the appearance of politically motivated large numbers of western educated Saudi nationals, all that will have a considerable socio-political impact on the Saudi culture in the not so distant future and will require tools and new laws to adapt and cope with the changing environment. The prospects for the future seems very bright.

Note:

This paper is based on direct observation of the events in the Arab countries for over four decades in addition to the available literature on this subject such as:

- Radwan, Fathi, Philosophy of Islamic Jurisprudence. (Arabic).
- On Islamic Sharia and Human rights on Islam by a number of Saudi jurists (Arabic).
- Edward Atiyah, the Arabs. (English).
- Alfred Guillaume, Islam
- The Muslim World League Journal, Vol.. 11.